IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4640 OF 2005

Kanak Kumar Lallubhai Shah).. Petitioner

Versus

Yusuf Bhai Abdul Husain and others).. Respondents

Mr.S.B.Shetye for the Petitioner.

Ms.E.A.Gonsalves for Respondent Nos.1 to 3.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 18TH JULY 2005

P.C.:

. The Petitioner seeks to challenge the order passed by the trial Court dismissing the Interim Notice taken out by him seeking permission to file Written Statement. He has also challenged the order in Revision made by the Appellate Court dismissing the Revision. The Suit was filed in 1992. On 3rd April 1996, an order was passed directing that the Suit be proceeded with ex-parte. On 6th November 2003, notice was taken out by the Petitioner for filing Written Statement. The explanation given by the Petitioner are (i) that he was suffering from cancer; (ii) that he was negotiating with the Plaintiffs and (iii) that he was defending the proceedings instituted by his brother in the City Civil Court during the same period.

2. All these grounds which have been raised before

the trial Court as well as the Revisional Court have been disbelieved. The Revisional Court has found, after quoting from the medical reports of the Petitioner, that no reports subsequent to May 1996 were produced indicating that the Petitioner was advised rest or that the Petitioner was not able to prosecute the proceedings in the trial Court. On the contrary, the Revisional Court has found that the Petitioner was contesting S.C. Suit No.6956 of 1992 in the City Civil Court between his brother and himself. In such circumstances, the Courts below have discharged the notice of the Petitioner. The Appellate Court has also found that although he was negotiating with the Plaintiffs, the Petitioner has not mentioned who he was negotiating with for putting an end to the Suit.

3. I see no reason to interfere with the concurrent findings of facts. The Suit is of the year 1992. Since no Written Statement was filed for four years, the Suit was to be heard ex-parte. From 1996, when directions for an ex-parte hearing were given, no steps were initiated by the Petitioner for seven years. The notice was taken out by the Petitioner only thereafter. There has been a gross delay on the part of the Petitioner which cannot be condoned for the reasons set out by the Petitioner since both the Courts have not accepted the grounds are genuine. Although the Petitioner was suffering from cancer, he was able to pursue his rights in the City

Civil Court. Hence, Petition dismissed.